

July 18, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *July 2, 2003, "Reply" of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Joint Opposition of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., IB Docket No. 03-115*

Dear Ms. Dortch:

This letter is submitted on behalf of Pacific Telecom Inc. ("Pacific Telecom" or "PTI") and Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") (collectively, the "Joint Applicants") in response to the unauthorized "reply" dated July 2, 2003, filed on behalf of the Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Office of the CNMI Governor").¹

A. The Office of The CNMI Governor Has Not Met Its Burden For A Hearing

The Office of the CNMI Governor asks the Commission to:

recognize that the Communications Act of 1934, as amended, states that a proceeding involving a certificate under Section 214 will be designated for hearing at the request of a Governor. Thus, a hearing should be granted as a matter of right in this proceeding in the event that PTI/BANZHI's applications are not denied. *See* 47 U.S.C. § 214(b). *See also* 47 C.F.R. § 1.764(b).²

¹ The FCC public notice establishing the procedural schedule in IB Docket No. 03-115, DA 03-1532 (May 9, 2003), did not authorize a "reply" by those who filed petitions to deny.

² CNMI Governor's July 2, 2003, letter at 2 (citation not relevant to FCC hearing issue omitted).

The statute and regulation cited by the Office of the CNMI Governor do not support his legal arguments. First, although Section 214(b) requires the Commission to notify the Governor of a State concerning a 214 application affecting the State, the statute provides only “the right to those notified to be heard.” The Office of the Governor has exercised its right to be heard by filing a petition to deny and its unauthorized reply. The language of Section 214(b) clearly does not require the Commission to designate a hearing solely at the request of a Governor.

Section 1.764(b) does authorize a hearing to be held upon the request of a governor, but only concerning applications filed “under this section,” that is, applications under Section 1.764(a) that seek authority under Section 214 of the Act “to discontinue, reduce, or impair service to a community or part of a community.” No Section 214 discontinuance application triggering Section 1.764 has been filed. Indeed, the Joint Applicants clearly stated in their Section 214 transfer of control application that the proposed “transaction will not . . . reduce existing services.”³ The Office of the CNMI Governor’s citation of Section 1.764(b) in support of its claimed “right” to a hearing, therefore, is groundless.

The Office of the CNMI Governor further claims that its petition “raises numerous substantial and material questions of fact” and makes a *prima facie* showing that grant of the underlying transfer of control applications would be inconsistent with the public interest.⁴ None of the issues raised by the Governor, especially when viewed against the opposing evidence submitted by the Joint Applicants, satisfies his burden of proof to raise a substantial and material question of fact that would warrant denial of the transfer or designation for hearing.⁵

³ *Joint Application for Transfer of Control of Domestic 214 Authority*, April 18, 2003, at 8.

⁴ CNMI Governor’s July 2, 2003, letter at 1. The CNMI’s leading newspaper, *The Marianas Variety* (which has absolutely no affiliation with Pacific Telecom or its owners), questions the Office of the CNMI Governor’s view of the public interest and enthusiastically supports the proposed foreign investment in MTC by Pacific Telecom, because the “[t]he CNMI needs new investments [and] PTI is a new investor with a reputable and proven track record.” The editorial questions “what new major investment in the CNMI will not be foreign” and concludes that Pacific Telecom’s purchase “is expected to lead to significant improvements in telecommunications technology and services available to CNMI customers.” The June 27, 2003, editorial is appended as Attachment A.

⁵ Under Section 309(d), the burden of both presenting a *prima facie* case and demonstrating the existence of a substantial and material question of fact is borne by the petitioner. *Application of Choctaw Broadcasting Corporation (Assignor) and New South Communications, Inc. (Assignee)*, 12 FCC Rcd 8534, 8538 (1997). The affidavit submitted by the Office of the CNMI Governor that includes only general allegations on information

B. Alleged Misrepresentations

The Office of the CNMI Governor strains to blame the current 100 percent owners of Pacific Telecom (Ricardo C. Delgado and his son Jose Ricardo Delgado) for the alleged misrepresentations made in a previous proceeding by a former Pacific Telecom shareholder and its employee who no longer have anything to do with the company. The Joint Applicants clearly stated that they “had no knowledge that an affiliate of Tan [the former shareholder] in an unrelated business had a *nolo contendere* plea more than eleven years ago and had failed to disclose it on the FCC application forms that Tan had primary responsibility for completing.”⁶ In the absence of specific and concrete evidence refuting this statement or a *prima facie* demonstration that the Delgados had an intent to mislead the Commission, the allegations imputing past alleged misrepresentations of another party to the new 100 percent owners of Pacific Telecom are meritless.⁷

and belief is plainly insufficient to trigger a hearing under Section 309(d) of the Act. *See North Idaho Broadcasting Company*, 8 FCC Rcd 1637, 1638 (1993).

⁶ *Joint Opposition To Petition To Deny And Comments*, IB Docket No. 03-115, June 24, 2003, at 12.

⁷ *Weyburn Broadcasting Ltd. Partnership v. FCC*, 984 F. 2d 1220, 1232 (D.C. Cir. 1993) (“intent to deceive [is] an essential element of misrepresentation.”). *See also Secret Communications II, LLC (Assignor) and Clear Channel Broadcasting Licenses, Inc. (Assignee)*, 18 FCC Rcd 9139, 9151 and n. 63 (2003), *citing, inter alia, Garret, Andrews & Letizen, Inc. and Ferraro and Ferraro*, 86 FCC 2d 1172, 1180 (Rev. Bd. 1981), *mod. on other grounds*, 88 FCC 2d 620 (1981) (burden on petitioner to demonstrate motive to deceive or conceal because Commission will not infer improper motive from speculation that lacks factual support).

Ms. Marlene H. Dortch
July 18, 2003
Page 4

Please contact the Joint Applicants' undersigned attorneys if you have any questions.

Sincerely submitted,

_____/s/
Peter D. Shields
Jennifer D. Hardin
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006
202-719-7000 (voice)
202-719-7049 (fax)
Attorneys for Bell Atlantic
New Zealand Holdings, Inc.

_____/s/
Kenneth D. Patrich
Timothy J. Cooney
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
202-783-4141 (voice)
202-783-5851 (fax)
Attorneys for Pacific Telecom Inc.

cc: Attached Service List

ATTACHMENT A

Marianas Variety News & Views

Micronesia's Leading Newspaper Since 1972

Vol. 31 No. 75
©2003 Marianas Variety

Friday, June 27, 2003

www.mvariety.com
Serving the CNMI for 31 years



© 2003 Marianas Variety
Published by Yonnis Art Studio
Inc.
All Rights Reserved
Email : mvariety@vznpacific.net

How NOT to attract foreign investors (2)

THE administration, which says that it is trying to woo foreign investors, should not oppose PTI's purchase of Verizon on the grounds that the investor in question is foreign — particularly when the governor and the Lt. governor are pushing for the privatization of CUC's power division which, we were told, is likely to be awarded to their favored contractor, who is as local as kimchi and Ginebra San Miguel.

Here's a question to local leaders: Besides the proposed OTEC facility, what new major investment in the CNMI will not be foreign?

We believe, in any case, that the governor's concerns regarding PTI were already addressed by the withdrawal of Tan Holdings from the consortium. Hence, PTI should not be considered "guilty" by association, and the governor should have accepted the invitation to inspect the company's facilities before filing his comments with the FCC.

The CNMI needs new investments. PTI is a new investor with a reputable and proven track record. Moreover, PTI actually wants to bring in millions of dollars into this cash-strapped commonwealth. It is more than willing to comply with all applicable local AND federal rules and regulations. Its purchase of the local Verizon franchise is expected to lead to significant improvements in telecommunications technology and services available to CNMI customers. PTI, in addition, intends to make its resident workers part of the new company.

CNMI officials junket every now and then to "lure investors." Here is a company that wants to invest in the CNMI whose officials, in turn, have done nothing but to block it. And then they all wonder why no one else wants to invest in the commonwealth.

CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on July 18, 2003, the foregoing was served on all parties listed below by hand delivery (indicated by asterisk) and US. mail, first class, postage prepaid.

Michael K. Powell*
Chairman, Federal Communications
Commission
445 12th Street, S.W.
Room 8-B201
Washington, D.C. 20554

Kathleen Q. Abernathy*
Commissioner, Federal Communications
Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Michael J. Copps*
Commissioner, Federal Communications
Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Kevin J. Martin *
Commissioner, Federal Communications
Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Jonathan S. Adelstein*
Commissioner, Federal Communications
Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Marsha MacBride*
Director, Homeland Security Policy Council
Federal Communications Commission
Office of the Chairman
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Kent R. Nilsson*
Special Counsel and Deputy Chief
for Network Reliability
Office of Engineering and Technology
Network Technology Division
Federal Communications Commission
445 12th Street, SW
Room 7B452
Washington, D.C. 20554

Susan O'Connell*
Federal Communications Commission
Policy Division, International Bureau
445 12th Street, S.W.
Room 7-B544
Washington, D.C. 20554

Gardner Foster*
Federal Communications Commission
Policy Division, International Bureau
445 12th Street, S.W.
Room 7-A861
Washington, D.C. 20554

Dennis Johnson*
Federal Communications Commission
Competition Policy Division
Wireline Competition Bureau
445 12th Street, S.W.
Room 6-A461
Washington, D.C. 20554

David Strickland*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 7-B428
Washington, D.C. 20554

Qualex International*
445 12th Street, S.W.
Room CY -B402
Washington, D.C. 20554

Madeleine Z. Bordallo
United States Representative, United States
Territory of Guam
427 Cannon House Office Building
Washington, D.C. 20515-5301

John McCain
United States Senator, Arizona
Chairman, United States Committee on
Commerce, Science and Transportation
241 Russell Senate Office Building
Washington, D.C. 20510

Marvin M. Dodge
Commander, U.S. Navy
Assistant Chief of Staff for Civil-Military
Affairs
U.S. CINCPAC REP Guam, CNMI, FSM &
Palau
Attn: Code N5
PSC 455 Box 152
FPO AP 96540-1000

Kenneth L. Doroshov
Trial Attorney
U.S. Department of Justice
Criminal Division, Computer Crime and
Intellectual Property Section
1301 New York Avenue, N.W., Suite 600
Washington, D.C. 20005

Neil A. Dellar*
Federal Communications Commission
Transaction Team, Office of the General
Counsel
445 12th Street, S.W.
Room 8-C818
Washington, D.C. 20554

Conrad Burns
United States Senator, Montana Chairman,
United States Subcommittee on
Communications
428 Hart Senate Office Building
Washington, D.C. 20510

Hon. George Miller
United States Representative, California
2205 Rayburn HOB
Washington, D.C. 20515-0507

Felix Perez Camacho
Governor, Territory of Guam
P.O. Box 2950
Hagatna, Guam 96932

Fred Upton
United States Representative, Michigan
Chairman, United States Subcommittee on
Telecommunications and the Internet
2161 Rayburn House Office Building
Washington, D.C. 20515

Jeannine R. Aguon
Senior Legislative Assistant
2428 Rayburn Building
Washington, D.C. 20515

Josephine Scarlett, Office of Chief Counsel
National Telecommunications & Information
Administration
U.S. Department of Commerce
1401 Constitution Avenue N.W.,
Room 4713
Washington, D.C. 20230

W.J. Tauzin
United States Representative, Louisiana
Chairman, United States Committee on Energy
and Commerce
2183 Rayburn House Office Building
Washington, D.C. 20515

Paul R. Schwedler
Trial Attorney (General)
Defense Information Systems Agency
702 South Courthouse Rd.
Arlington, V.A. 22204-2199

Tom Ridge
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Clyde Lemons, Jr.
Acting Attorney General
Commonwealth of the Northern Mariana
Islands
2nd Floor Hon. Juan A. Sablan
Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

Daniel K. Akaka
United States Senator, Hawaii
141 Hart Senate Office Building
Washington, D.C. 20510

Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Richard Salgado
Trial Attorney
Computer Crime Section
U.S. Department of Justice
1301 New York Avenue, N.W.
Suite 600
Washington, D.C. 20053

James Lovelace
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Suite 7877
Washington, D.C. 20535

Michael S. Mowery
International Vice President-9th District
International Brotherhood of Electrical
Workers
2500 Venture Oaks Way, Suite 250
Sacramento, California 95833-4221

Office of the U.S. Coordinator for International
Communication and Information Policy
U.S. Department of State
Mail Code: EB/CIP
2201 C Street, N.W.
Room 4826
Washington, D.C. 20520-5820

Brenton Greene
Deputy Manager
National Communications System
701 South Courthouse Road
Arlington, VA 22201-2199

Lawrence C. Hale
Director, FedCIRC
7th & D Streets, S.W.
Room 5060
Washington, D.C. 20407

U.S. Department of Homeland Security
Attn: Critical Infrastructure Assurance Office
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Representative Gloria Dlc. Cabrera
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Oscar M. Babauta
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

David B. Cohen
Deputy Assistant Secretary for Insular Affairs
Office of Insular Affairs
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Jack Zinman
Senior Advisor, Office of the Assistant
Secretary for Communications and Information
National Telecommunications & Information
Administration
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Room 4898B
Washington, D.C. 20230

John G. Malcolm
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Representative Herman T. Palacios
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Pedro P. Castro
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Thomas K. Crowe
Gregory K. Kunkle
Law Offices of Thomas K. Crowe, P.C.
1250 24th Street, N.W.
Suite 300
Washington, D.C. 20037

Veronica Ahern
Nixon Peabody LLP
401 9th Street, N.W.
Washington, D.C. 20004

Anthony A. Das
Senior Vice President/Managing Director For
Asia and the Pacific
PCI Communications, Inc.
135 Chalan Santo Papa, Suite 101
Hagatna, GU 96910

Representative Martin B. Ada
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Senator Pete D. Reyes
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Herman Q. Deleon Guerrero
P.O. Box 500825
Saipan, MP 96950-0825

Representative Stanley T. Torres
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Joseph P. Deleon Guerrero
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586


Felicia Lane